

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 900

Introduced by Assembly Member Levine

February 26, 2015

An act to amend Section ~~155 of the Code of Civil Procedure~~, 1600 of, and to add Section 1510.1 to, the Probate Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

AB 900, as amended, Levine. Juveniles: special immigrant juvenile status.

Existing federal law, the Immigration and Nationality Act, establishes a procedure for classification of certain aliens as special immigrants who have been declared dependent on a juvenile court, and authorizes those aliens to apply for an adjustment of status to that of a lawful permanent resident within the United States. Under federal regulations, an alien is eligible for special immigrant juvenile status if he or she is under 21 years of age. Existing state law provides that the juvenile, probate, and family divisions of the superior court have jurisdiction to make judicial determinations regarding the custody and care of juveniles within the meaning of the federal Immigration and Nationality Act. Existing law also requires the court, upon request, to make the necessary findings regarding special immigrant juvenile status if there is evidence to support those findings, as specified.

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Existing law also establishes the jurisdiction of the probate court. Existing law regulates the establishment and termination of

guardianships in probate court, and specifies that a guardian has the care, custody, and control of a ward.

Existing law provides that a relative or other person on behalf of a minor, or a minor if he or she is 12 years of age or older, may file a petition for the appointment of a guardian of the person or estate of the minor. Existing law also provides that a guardianship of the person or estate terminates when the ward attains majority or dies, or is adopted or emancipated, as specified.

This bill would authorize a court to appoint a guardian of the person of an unmarried individual who is older than 18 years of age and younger than 21 years of age in connection with a petition to make the necessary findings regarding special immigrant juvenile status, as specified, if the proposed ward consents. This bill would also authorize a court to continue a guardianship of the person of a ward beyond 18 years of age, as specified, if the ward consents. This bill would also provide that a guardianship of the person terminates after the ward attains majority unless the ward consents to the continuation of the guardianship of the person until he or she is 21 years of age, as specified.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) *The Legislature finds and declares all of the*
- 2 *following:*
- 3 (1) *California law recognizes that superior courts have*
- 4 *jurisdiction to make judicial determinations regarding the custody*
- 5 *and care of children within the meaning of the federal Immigration*
- 6 *and Nationality Act, including the juvenile, probate, and family*
- 7 *court divisions of the superior court. These courts are empowered*
- 8 *to make the findings necessary to enable a child to petition the*
- 9 *United States Citizenship and Immigration Services for*
- 10 *classification as a special immigrant juvenile under federal law.*
- 11 (2) *The findings necessary to enable a child to petition for*
- 12 *classification as a special immigrant juvenile include, among other*
- 13 *things, a finding that reunification is not viable with one or both*
- 14 *parents due to abuse, neglect, abandonment, or a similar basis,*
- 15 *and that it is not in the child's best interest to be returned to his*
- 16 *or her country of origin.*

1 (3) *Despite recent changes to law that eliminate ambiguity*
2 *regarding the jurisdiction of superior courts to make the findings*
3 *necessary to petition for special immigrant juvenile status,*
4 *misalignment between state and federal law continues to exist.*

5 (4) *Federal law allows a person under 21 years of age, who*
6 *otherwise meets the requirements for special immigrant juvenile*
7 *status, to file for relief as a special immigrant juvenile. In*
8 *California, however, individuals who are older than 18 years of*
9 *age and younger than 21 years of age have largely been unable*
10 *to obtain the findings from the superior court necessary to seek*
11 *special immigrant juvenile status and the relief that it was intended*
12 *to afford them, solely because probate courts cannot take*
13 *jurisdiction of individuals 18 years of age or older by establishing*
14 *a guardianship of the person.*

15 (5) *Given the recent influx of unaccompanied immigrant children*
16 *arriving to the United States, many of whom have been released*
17 *to family members and other adults in California and have*
18 *experienced parental abuse, neglect, or abandonment, it is*
19 *necessary to provide an avenue for these unaccompanied children*
20 *to petition the probate courts to have a guardian of the person*
21 *appointed beyond reaching 18 years of age. This is particularly*
22 *necessary in light of the vulnerability of this class of*
23 *unaccompanied youth, and their need for a custodial relationship*
24 *with a responsible adult as they adjust to a new cultural context,*
25 *language, and education system, and recover from the trauma of*
26 *abuse, neglect, or abandonment. These custodial arrangements*
27 *promote permanency and the long-term well being of immigrant*
28 *children present in the United States who have experienced abuse,*
29 *neglect, or abandonment.*

30 (6) *Guardianships of the person for persons older than 18 years*
31 *of age and younger than 21 years of age may be necessary and*
32 *convenient for individuals petitioning the court for a guardianship*
33 *of the person in conjunction with a request for the findings*
34 *necessary to enable the child to petition United States Citizenship*
35 *and Immigration Services for classification as a special immigrant*
36 *juvenile.*

37 (b) *It is the intent of the Legislature to give the probate court*
38 *jurisdiction to appoint a guardian over a person older than 18*
39 *years of age and younger than 21 years of age in connection with*
40 *a special immigrant juvenile status petition. It is further the intent*

1 of the Legislature to provide an avenue for a person older than 18
2 years of age and younger than 21 years of age to petition to have
3 a guardian of the person appointed beyond 18 years of age in
4 conjunction with a request for the findings necessary to enable the
5 person to petition the United States Citizenship and Immigration
6 Services for classification as a special immigrant juvenile.

7 SEC. 2. Section 1510.1 is added to the Probate Code, to read:

8 1510.1. (a) (1) With the consent of the proposed ward, the
9 court may appoint a guardian of the person for an unmarried
10 individual who is older than 18 years of age and younger than 21
11 years of age in connection with a petition to make the necessary
12 findings regarding special immigrant juvenile status pursuant to
13 subdivision (b) of Section 155 of the Code of Civil Procedure.

14 (2) A petition for guardianship of the person of a proposed ward
15 who is older than 18 years of age and younger than 21 years of
16 age may be filed by a relative or any other person on behalf of the
17 proposed ward, or the proposed ward.

18 (b) (1) With the consent of the ward, the court may continue
19 the guardianship of the person for the ward beyond 18 years of
20 age, for purposes of allowing the ward to complete the application
21 process with the United States Citizenship and Immigration
22 Services for classification as a special immigrant juvenile pursuant
23 to Section 1101(a)(27)(J) of Title 8 of the United States Code.

24 (2) A relative or any other person on behalf of a ward, or the
25 ward, may file a petition to continue the guardianship of the person
26 for a period of time not to extend beyond the ward reaching 21
27 years of age.

28 (c) Notwithstanding Section 6500 of the Family Code, for
29 purposes of this part, the terms "child," "minor," and "ward"
30 include an unmarried individual who is younger than 21 years of
31 age and who consents to the appointment of a guardian or
32 continuation of a guardianship after he or she attains 18 years of
33 age pursuant to this section.

34 (d) The Judicial Council shall adopt any rules and forms needed
35 to implement this section.

36 SEC. 3. Section 1600 of the Probate Code is amended to read:

37 1600. (a) A guardianship of the person or estate or both
38 terminates when the ward attains majority ~~or dies~~; unless the ward
39 consents to the continuation of the guardianship of the person until
40 the ward attains 21 years of age pursuant to Section 1510.1.

(b) A guardianship of the person terminates upon the *death of the ward, the adoption of the ward* ward, or upon the emancipation of the ward under ~~Section 7002~~ *Section 7002* of the Family Code.

SECTION 1. ~~Section 155 of the Code of Civil Procedure is amended to read:~~

~~155. (a) A superior court has jurisdiction under California law to make judicial determinations regarding the custody and care of a child within the meaning of the federal Immigration and Nationality Act (8 U.S.C. Sec. 1101(a)(27)(J) and 8 C.F.R. Sec. 204.11), which includes, but is not limited to, the juvenile, probate, and family court divisions of the superior court. These courts may make the findings necessary to enable a child to petition the United States Citizenship and Immigration Service for classification as a special immigrant juvenile pursuant to Section 1101(a)(27)(J) of Title 8 of the United States Code.~~

~~(b) (1) If an order is requested from the superior court making the necessary findings regarding special immigrant juvenile status pursuant to Section 1101(a)(27)(J) of Title 8 of the United States Code, and there is evidence to support those findings, which may consist of, but is not limited to, a declaration by the child who is the subject of the petition, the court shall issue the order, which shall include all of the following findings:~~

~~(A) The child was either of the following:~~

~~(i) Declared a dependent of the court.~~

~~(ii) Legally committed to, or placed under the custody of, a state agency or department, or an individual or entity appointed by the court. The court shall indicate the date on which the dependency, commitment, or custody was ordered.~~

~~(B) Reunification of the child with one or both of the child's parents was determined not to be viable because of abuse, neglect, abandonment, or a similar basis pursuant to California law. The court shall indicate the date on which reunification was determined not to be viable.~~

~~(C) It is not in the best interest of the child to be returned to the child's, or his or her parent's, previous country of nationality or country of last habitual residence.~~

~~(2) If requested by a party, the court may make additional findings that are supported by evidence.~~

~~(e) In any judicial proceedings in response to a request that the superior court make the findings necessary to support a petition~~

1 ~~for classification as a special immigrant juvenile, information~~
2 ~~regarding the child's immigration status that is not otherwise~~
3 ~~protected by state confidentiality laws shall remain confidential~~
4 ~~and shall be available for inspection only by the court, the child~~
5 ~~who is the subject of the proceeding, the parties, the attorneys for~~
6 ~~the parties, the child's counsel, and the child's guardian.~~

7 ~~(d) In any judicial proceedings in response to a request that the~~
8 ~~superior court make the findings necessary to support a petition~~
9 ~~for classification as a special immigrant juvenile, records of the~~
10 ~~proceedings that are not otherwise protected by state confidentiality~~
11 ~~laws may be sealed using the procedure set forth in California~~
12 ~~Rules of Court 2.550 and 2.551.~~

13 ~~(e) The Judicial Council shall adopt any rules and forms needed~~
14 ~~to implement this section.~~